

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE JURISDICTION**

FIRST APPEAL NO. 880 OF 2023

Reliance General Insurance Co. ltd.)
4th Floor, Chintamani Avenue)
of Western Express Highway, Ahead)
of Virwani Industrial Estate)
Goregaon (East) Mumbai-400063)....Appellant

Versus

1. Anil Shankar Bohate)
Aged: 55 years, Occ: Service)

2. Ankita Anil Bobhate)
Aged: 49 years, Occ: Household)
Both R/o. Swatej Building)
Mongalwadi Khopoli)
Tal. Khalapur, Dist: Raigad)

3. Madhukar S. Thakur)
R/o: Jaskhar, Post. J. N. P. T. Uran)
Tal. Uran, Dist: Raigad)....Respondents

(Res. Nos.1 & 2 are Org. Applicant and
Respondent No.3 is Orig. Opp. Party)

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Ms. Shalini Shankar, Advocate for the Appellant.
Mr. Sanjay Ghaisas, Advocate for the Respondent Nos. 1 & 2.

CORAM : SHIVKUMAR DIGE, J.

DATE : 22nd FEBRUARY, 2024.

Oral Judgment. :

1. The issue involved in this appeal is income of deceased is considered on higher side and at the time of accident deceased was not wearing helmet.

2. It is contention of learned counsel for the Appellant/Insurance Company that at the time of accident deceased was not wearing helmet but the Tribunal has not considered her contributory negligence. Learned counsel further submitted that the Tribunal has considered monthly income of the deceased at Rs.15,000/- per month without any evidence on record, which is on higher side. Hence, requested to allow the Appeal.

3. It is contention of learned counsel for the Respondents/Claimants that deceased was pillion rider on motorcycle

hence, no question of wearing helmet arises. Learned counsel further submitted that deceased was working as recruitment specialist in Think People Solution Private Limited and she was getting salary of Rs.15,000/-. The evidence is produced on record to prove the salary of deceased on that basis, the Tribunal has considered her salary, which is proper. Hence, requested to dismiss the Appeal.

4. I have heard both learned counsel. Perused judgment and order passed by the Motor Accident Claims Tribunal, Raigad (for short “the Tribunal”).

5. At the time of accident, deceased was pillion rider on Active scooter so, no question of issue of wearing helmet will arise. Moreover, accident occurred due to negligence of driver of offending Tanker. The offence was registered against the driver of offending Tanker, so no question of contributory negligence of deceased arises. Hence, I do not see merit in it. To prove the income of deceased, the Claimants have examined PW-2 Smt Jaya Gwalani, at Exhibit-37, she is employee of Think People Solution Private Limited, she has stated that deceased was serving in Think People Solution Private Limited

and was earning Rs.15,000/- per month as salary. The letter of contract is at Exhibit-39. The form No.16-A is at Exhibit 41. This documents shows that deceased was getting salary of Rs.15,000/- per month. After deducting Rs.200/- as professional tax, the Tribunal has considered monthly income of Rs.14,800/- per month. I do not find infirmity in it.

6. In view of above, I pass following order.

ORDER

- i. Appeal is dismissed.
- ii. The Claimants are permitted to withdraw deposited amount along with accrued interest thereon.
- iii. The statutory amount be transmitted to the Tribunal along with accrued interest thereon. The parties are at liberty to withdraw it, as per Rule.

7. All pending applications, if any, stand disposed of.

(SHIVKUMAR DIGE, J.)